

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JOHN EDWARDS JIMENEZ,

Petitioner,

M. SMELOSKY, Acting Warden,

Respondent.

Civil No. 08-0866 W (POR)

**ORDER REOPENING CASE AND
SETTING BRIEFING SCHEDULE**

On May 13, 2008, Petitioner, proceeding pro se, submitted a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. In its May 27, 2008 Order, the Court dismissed this case without prejudice because Petitioner failed name a proper respondent, failed to allege exhaustion of his state judicial remedies and failed to state a cognizable federal claim. (*See* Order dated May 27, 2008 [doc. no. 3].) Petitioner was instructed that to have this case reopened, he had to file a First Amended Petition which cured the pleading deficiencies outlined in the dismissal Order no later than July 28, 2008.

On July 2, 2008, Petitioner filed a First Amended Petition pursuant to this Court's Order. Based on this Court's review of the First Amended Petition, the Court **ORDERS** that this case be reopened. Further, in accordance with Rule 4 of the rules governing petitions for a writ of

1 habeas corpus pursuant to 28 U.S.C. § 2254, and upon a preliminary review of the First
2 Amended Petition, **IT IS ORDERED** that:

3 1. The Clerk of this Court shall promptly (a) serve a copy of the Petition and a copy
4 of this Order on the Attorney General for the State of California, or his authorized agent; and
5 (b) serve a copy of this Order on Petitioner.

6 2. If Respondent contends the Petition can be decided without the Court's reaching
7 the merits of Petitioner's claims (e.g., because Respondent contends Petitioner has failed to
8 exhaust any state remedies as to any ground for relief alleged in the Petition, or that the Petition
9 is barred by the statute of limitations, or that the Petition is subject to dismissal under Rule 9 of
10 the Rules Governing § 2254 Cases, or that all of the claims are procedurally defaulted, or that
11 Petitioner is not in custody), Respondent shall file a motion to dismiss pursuant to Rule 4 of the
12 Rules Governing § 2254 Cases no later than August 28, 2008. The motion to dismiss shall not
13 address the merits of Petitioner's claims, but rather shall address all grounds upon which
14 Respondent contends dismissal without reaching the merits of Petitioner's claims is warranted.¹
15 At the time the motion to dismiss is filed, Respondent shall lodge with the Court all records
16 bearing on Respondent's contention in this regard. A hearing date is not required for the motion
17 to dismiss.

18 3. If Respondent files a motion to dismiss, Petitioner shall file his opposition, if any,
19 to the motion no later than September 29, 2008. At the time the opposition is filed, Petitioner
20 shall lodge with the Court any records not lodged by Respondent which Petitioner believes may
21 be relevant to the Court's determination of the motion.

22 4. Unless the Court orders otherwise, Respondent shall not file a reply to Petitioner's
23 opposition to a motion to dismiss. If the motion is denied, the Court will afford Respondent
24 adequate time to respond to Petitioner's claims on the merits.

25 5. If Respondent does not contend that the Petition can be decided without the Court
26 reaching the merits of Petitioner's claims, Respondent shall file and serve an answer to the
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28 ¹ If Respondent contends Petitioner has failed to exhaust any state remedies as to any ground for relief alleged in
the Petition, the motion to dismiss shall also specify the state remedies still available to Petitioner.

1 Petition, as well as points and authorities in support of such answer, no later than **September**
2 **12, 2008.** At the time the answer is filed, Respondent shall lodge with the Court all records
3 bearing on the merits of Petitioner's claims. The lodgments shall be accompanied by a notice
4 of lodgment which shall be captioned "**Notice of Lodgment in 28 U.S.C. § 2254 Habeas**
5 **Corpus Case — To Be Sent to Clerk's Office.**" Respondent shall not combine separate
6 pleadings, orders or other items into a combined lodgment entry. Each item shall be numbered
7 separately and sequentially.

8 6. Petitioner may file a traverse to matters raised in the answer no later than **October**
9 **14, 2008.** Any traverse by Petitioner (a) shall state whether Petitioner admits or denies each
10 allegation of fact contained in the answer; (b) shall be limited to facts or arguments responsive
11 to matters raised in the answer; and (c) shall not raise new grounds for relief that were not
12 asserted in the Petition. Grounds for relief withheld until the traverse will not be considered.
13 No traverse shall exceed ten (10) pages in length absent advance leave of Court for good cause
14 shown.

15 7. A request by a party for an extension of time within which to file any of the
16 pleadings required by this Order should be made in advance of the due date of the pleading, and
17 the Court will grant such a request only upon a showing of good cause. Any such request shall
18 be accompanied by a declaration under penalty of perjury explaining why an extension of time
19 is necessary.

20 8. Unless otherwise ordered by the Court, this case shall be deemed submitted on the
21 day following the date Petitioner's opposition to a motion to dismiss and/or his traverse is due.

22 9. Every document delivered to the Court must include a certificate of service
23 attesting that a copy of such document was served on opposing counsel (or on the opposing
24 party, if such party is not represented by counsel). Any document delivered to the Court without
25 a certificate of service will be returned to the submitting party and disregarded by the Court.

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1 10. Petitioner shall immediately notify the Court and counsel for Respondent of any
2 change of Petitioner's address. If Petitioner fails to keep the Court informed of where Petitioner
3 may be contacted, this action will be subject to dismissal for failure to prosecute.

IT IS SO ORDERED.

6 || DATED: July 15, 2008


Louisa S. Porter
United States Magistrate Judge